***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION No. 16582 of 1994

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%Dated 19.08.2005

S.P.S.Venkataraman

…….. Petitioner

$ 1. The Cotton Corporation of India Ltd.

and two others

…… Respondents

! Counsel for Petitioner : Sri Nazeer Khan

^ Counsel for Respondents : Sri A.K.Jayaprakash Rao

< GIST:

> HEAD NOTE:

? Cases referred

) 2003(4) SCC 364

2) 2003(10) SCC 196

3) 2003(9) SCC 480

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.16582 of 1994

ORDER:

1. The order passed by the Chairman & Managing Director, Cotton Corporation of India, vide proceedings dated 25-7-1994, confirming the order passed by the Director (Purchase & Sales), vide proceedings dated 26-5-1994, imposing punishment of removal from service on the petitioner, is impugned in this writ petition.

2. The facts, to the extent necessary for the purpose of this writ petition, are that the petitioner joined as Junior Cotton Purchaser in the Cotton Corporation of India on 3-12-1979. After working for eight years in its Bangalore Branch, the petitioner was transferred and posted at Adilabad Branch, where he worked as Junior Cotton Purchaser till he was placed under suspension on 18-7-1991. The petitioner was on leave from 21-5-1991 and during his leave period, on the intervening night of 7/8th June 1991, a fire accident occurred at the Central Warehousing Corporation

godown, Adilabad as a result of which 2351 fully pressed bales of cotton were completely gutted resulting in the Corporation being put to loss of approximately Rs.72.13 lakhs. Sri N.K.Parauha, Assistant Manager/Centre Incharge, Adilabad Centre, Sri N.Thiruvenkata Swamy, Cotton Purchase Officer, Adilabad Centre, and Sri D.L.Masali, Cotton Purchase Officer, Adilabad Centre were also placed under suspension for the loss caused to the Corporation due to the very same fire accident. While disciplinary proceedings were held separately against the petitioner, Sri N.Thiruvenkata Swamy and Sri D.L.Masali, Sri N.K. Parauha resigned during the period of his suspension. It is the petitioner's case that it was Sri N.K. Parauha, who was mainly responsible and whose negligence had resulted in the gutted stocks not being insured earlier. While separate orders of suspension were passed against the aforesaid four employees, separate disciplinary proceedings were conducted against three employees and not against Sri N.K.Parauha as his resignation was accepted and he was relieved from service. The petitioner contends that while the services of both Sri N.Thiruvenkata Swamy and Sri D.L. Masali were not terminated and they were imposed lesser penalties by the second respondent, punishment of removal from service was imposed on the petitioner even though the charges levelled against him and the other two employees were similar, if not identical.

3. An Enquiry Officer was appointed, vide proceedings dated 8-4-1992, to conduct an enquiry against the petitioner with respect to the charges framed by the General Manager (Personnel). The articles of charges read thus:

"That Sri S.P.S.Venkataraman, Jr. Cotton Purchaser (under suspension), while functioning as Godown Incharge of the Central Warehousing Corporation, Adilabad, during the period from 18th December 1990 to 20th May 1991 committed gross dereliction and neglect of duty in that he failed to:

i. obtain due acknowledgement of receipts of fully pressed cotton bales deposited in CWC godowns, Adilabad for safe storage thereof;

ii. maintain stock register in respect of FP bales stored at the CWC godowns, Adilabad;

iii. maintain Insurance Register in respect of FP bales stored in the CWC godowns, Adilabad;

iv. cover FP bales with adequate insurance and review the position with regard to insurance coverage from day-to-day. Further, he failed to conform to the directions that insurance cover for such stocks should be on the basis of market prices plus 10%.

Sri S.P.S. Venkataraman, Jr.C.P., showed utter lack of responsibility, committed gross neglect of duty and acted in a manner prejudicial to the interests of the Corporation by not renewing insurance policies issued against Advice No.16 for Rs.80 lakhs from 19-2-1991 to 18-5-1991 even though the value of the stocks on hand warranted renewal thereof. Further, having regard to the value of FP bales stored in CWC godown, Adilabad, Sri S.P.S.Venkataraman was required not only to renew the above insurance policies but also to obtain fresh insurance policies in order to ensure that all the bales of the Corporation stored in CWC Godown, Adilabad were fully covered with adequate insurance.

In a fire accident which occurred in CWC godown, Adilabad on 7-6-1991, 2351 FP bales of H-4 & 1007 varieties of the Corporation stored in A-III Section of the said godown were fully gutted. As the stocks were heavily under-insured, the Corporation is faced with the risk of suffering huge financial loss in the matter of settlement of its insurance claim in respect of the said 2351 FP bales fully destroyed by fire. Further, Sri S.P.S.Venkataraman sent Daily Reports in the prescribed proforma showing receipt/delivery of FP bales and the stock position on day-to-day basis, purporting to confirm that the FP bales in stock were fully covered with adequate insurance. Moreover, this turned out to be false certification because he had failed to carry out actual review of the value of stocks and to verify adequate insurance coverage thereof.

Sri S.P.S.Venkataraman thus failed to maintain absolute devotion to duty, committed grave misconduct and acted in a manner prejudicial to the interests of the Corporation as well as in a manner unbecoming of a Corporation's employee, thereby violating Rules 4(1)(ii), (iii), 5(v), (x) and (xxiii) of the CCI (CDA) Rules, 1975."

4. The petitioner submitted his reply to the said charge memo on 23-12-1991, which was marked as Ex.P.2 by the Enquiry Officer. In his reply, the petitioner stated that his duty as Junior Cotton Purchaser of the branch was only to receive and deliver fully pressed cotton bales and that he had to look after receipt and delivery of cotton bales in the CWC godown, Adilabad, Agricultural Market Committee Godown, Adilabad and at MARKFED Godown at Adilabad, located in different places. It was his specific contention that he was not concerned in any way with the coverage of insurance of the stock stored in the godowns, that insurance coverage of the stock was being looked after by the Central Office, Adilabad, that insurance coverage duty was allotted to Sri N. Thiruvenkata Swamy, Cotton Purchase Officer, and that Sri N. K. Parauha, Asst. Manager was overall incharge and responsible for insurance coverage.

5. As the charges levelled against the petitioner were held proved, in the

departmental enquiry, the second respondent, by order dated 26.05.1994, imposed the major penalty of removal from service on the petitioner. In the appeal preferred by the petitioner, against the order of the second respondent, the first respondent, by order dated 25.07.1994, confirmed the order passed by the second respondent.

6. A counter affidavit is filed by the respondents wherein the fact that the petitioner was on leave, on the date of the fire accident, is admitted. It is, however, stated that the petitioner did not take appropriate action in getting the stocks belonging to the Corporation insured which resulted in the Corporation suffering huge loss on account of the fire accident. Respondents contend that this happened only due to the negligence of the petitioner. The fact that other employees were placed under suspension and domestic enquiry was also held against them is admitted. It is, however, contended that the **charges against all the employees were similar but not identical** (emphasis supplied). It is also admitted that Sri N.K. Parauha resigned from service as a result of which, the respondent Corporation did not hold any enquiry against him. It is further stated that the respondents imposed punishment on other employees taking into consideration the gravity of misconduct and the charges which were held proved against them, and that the punishment imposed was commensurate to the nature and gravity of the charges. The respondents contend that the petitioner cannot compare his case with that of the other employees. It is also stated that in respect of Sri N.Thiruvenkata Swamy, the Corporation had inflicted punishment of reduction of his pay by four stages in the time scale of pay for a period of two years with the condition that he would not earn further increments during the period of reduction and that the reduction would have the effect of postponing his future increments. With regards Sri D.L.Masali, it is stated that the respondent Corporation imposed punishment of reduction of pay by six stages in the time scale of pay for a period of four years with the condition that he would not earn increments of pay during the period of reduction, and on expiry of the period of reduction, the reduction would have the effect of postponing his future increments.

7. The respondents further contend that in the departmental enquiry the petitioner was given reasonable opportunity of being heard and that the Enquiry Officer had submitted the report holding the petitioner guilty of the charges. It is also stated that the order of removal exhaustively dealt with all the points raised by the petitioner and so also the order passed by the appellate authority, which would establish that there is no ambiguity in the orders passed by the respondent Corporation. It is stated

that the petitioner was appointed as a Godown Incharge and he was posted in the place of Sri N.Thiruvenkata Swamy who was transferred to work in the office of the Adilabad Purchase Centre, that the petitioner was required to look after the godown work at the Central Warehousing Corporation, Agricultural Market Committee, MARKFED and wherever the respondent Corporation hired godowns at Adilabad for storage of cotton bales and that the petitioner was responsible for receipt and delivery of bales at the godown, to maintain the stock register, cover the risk of stock daily and submit daily performance report to the respondents. It is the case of the respondents that the evidence on record clearly established that the petitioner had not only failed to maintain the requisite records/registers as Godown Incharge, but had also failed to ensure that the Corporation's stocks stored in the CWC godown were fully covered with insurance. It is specifically averred that the Godown Incharge is required to maintain the requisite stock and insurance register and issue regular insurance advice direct to the insurance company covering all the stocks. It is stated that the evidence on record discloses that prior to taking over charge as Godown Incharge, Sri N.Thiruvenkata Swamy, who was serving as Godown Incharge had maintained relevant records including stock and insurance register in respect of the stock of bales stored in the godowns. The petitioner's contention that he had not received any orders appointing him as Godown Incharge is denied as not being acceptable, and it is stated that the said orders were issued at the time when the petitioner was part and parcel of the Central Office and that it was normal to expect that he was fully aware of the said order. It is also stated that the Enquiry Officer had examined the Inward Register, in respect of issuance of orders, and had observed that he did not find the initials of the Receiving Officers i.e., the petitioner and Sri N. Thiruvenkata Swamy prior to or after 18-12-1990 in the said register. In so far as the petitioner's contention, that Sri N.K.Parauha was not summoned, is concerned the respondents state that since he had resigned from service, he could not be examined as a management witness and that it was open to the petitioner to examine him on his behalf as a defence witness. While admitting that the petitioner was on leave from 25-9-1991 onwards, including on the date of the fire accident on 7/8th June 1991, it is contended that the situation with regard to under- insurance of the Corporation's stocks in CWC godown had existed prior to the date on which the petitioner proceeded on leave and continued till the date of the fire accident i.e., 7-6-1991. It is also stated that the petitioner did not disclose with regard to under-insurance of stocks to his successor-in-office when he handed over charge before

proceeding on leave on 21-5-1994. It is further stated that the petitioner was sending daily reports confirming that the Corporation's stocks of cotton bales were fully covered with insurance and it was found on 18-5-1991 and thereafter that stocks were under-insured to an extent of Rs.1.20 crores. The petitioner had wrongly confirmed daily stock statement dated 20-5-1991 that the bales in stock were fully covered with insurance. It is stated that the petitioner has to bear full share of the blame for his failure to ensure that the stocks were fully covered with insurance during the period when he was functioning as Godown Incharge.

8. Sri Nazeer Khan, learned counsel for the petitioner, contends that the order of removal passed by the disciplinary authority, as confirmed in the order of the appellate authority, is illegal for the following reasons:-

1. A retired legal adviser had conducted the enquiry and since the applicable rules require only a public servant to conduct enquiry, and since the said legal adviser was not a public servant, the entire enquiry proceedings conducted by such person was without jurisdiction.

2. Other employees against whom similar charges were framed, relating to the very same fire accident, were imposed lesser punishment and were retained in service, whereas the petitioner was imposed punishment of removal from service. Imposition of different punishment, for similar charges relating to the very same incident, is discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

3. Since no allegation of misappropriation or corruption have been alleged against the petitioner, and since the petitioner was on leave on the date of the fire accident, the punishment of removal from service, as imposed upon him, is grossly disproportionate to the charges, even assuming that the charges are rightly held proved.

9. The first contention raised by Sri Nazeer Khan is that a retired legal advisor had conducted the domestic enquiry and since he is not a public servant and the rules require only a public servant to conduct enquiry, the entire enquiry proceedings

stand vitiated. Reliance is placed on the definition of 'public servant' under Section 21 of the Indian Penal Code whereunder every person mentioned in the clauses thereunder fall within the definition of "public servant". Learned counsel contends that only those persons who fall within the 12 clauses under Section 21 of the Indian Penal Code can be considered as public servants and since the enquiry officer is a retired legal adviser he does not come within the definition of 'public servant'.

10. Whether in fact the enquiry officer is a retired legal advisor of the Corporation and whether he falls within the definition of "Public Servant" are all mixed questions of fact and law. In the absence of any pleadings, in the affidavit filed in support of the writ petition, this question does not call for further examination and the contention raised in this regard is liable to be rejected.

11. The contention that punishment of removal is grossly disproportionate to the misconduct proved cannot also be accepted. While the contention of the learned counsel for the petitioner, that there is no allegation of misappropriation or charges of corruption leveled against the petitioner, is no doubt true, that by itself would not warrant interference of this Court with regards the quantum of punishment imposed since the charges levelled against the petitioner include the charge of not providing insurance cover to the stocks available in the godown as a result of which the Corporation is said to have suffered loss of Rs.72.13 lakhs. It is well settled law that the nature and extent of punishment to be imposed on an employee, for proved misconduct, are all matters for the employer to decide and it is only in cases where the punishment imposed is such as to shock the conscience of this Court would any interference be called for. (**Chairman and Managing Director, United Commercial Bank v. P.C.Kakkar**; **Union of India v. P.Chandramouli**) . In the facts and circumstances of the present case, considering the charges held proved against the petitioner, which include failure to maintain records and to provide insurance cover to the stocks available in the godowns of the respondent Corporation, which has resulted in enormous loss of approximately Rs.72.13 Lakhs to the Corporation, it cannot be said that the punishment of removal from service is one which shocks the conscience of this Court. This ground is also, therefore, liable to be rejected.

12. I however find considerable force in the other contention of discrimination, between similarly situated employees, regarding the quantum of punishment. It is contended that other employees, against whom similar charges were framed relating to the very same fire accident, were imposed lesser punishment and retained in

service whereas the petitioner was imposed a harsher penalty of removal from service. It is contended that differentiating similarly situated employees in the matter of imposition of punishment, is discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

13. This contention requires examination of the admitted and undisputed facts on record. It is seen from the enquiry report that prior to the petitioner being posted as the godown incharge of C.W.C. godown at Adilabad during the year 1990-91, Sri N.Thiruvenkata Swamy was the godown incharge. The Enquiry Officer held that on

7/8th June, 1991, when the fire accident took place at the C.W.C. godown, the closing stock was 9,861 bales out of which 2351 bales were burnt to ashes. The enquiry officer also held that when the fire accident took place on 7-6-1991, only three insurance policies of the value of Rs.2.30 Crores were in existence as against the value of existing stock of Rs.5.00 Crores. The enquiry officer found that on 20-5-1991, the Insurance value was Rs.3.55 Crores as against the stock value as on that date of Rs.5.12 Crores and thereby there was no insurance for stocks of a value of Rs.1.57 Crores whereas on 7-6-1991 the value of insurance in existence was Rs.2.30 Crores. This fact assumes significance since the petitioner was on leave from 21-5-1991 and was not on duty on the date when the fire accident took place on 7/8th June, 1991. After 20-5-1991, when the petitioner was on leave, Sri D.L.Masali was in charge of the godown. It is clear that Sri D.L.Masali did not also take steps to provide insurance cover to the stocks in the godown. The petitioner's stand has consistently been that there was no practice of the godown incharge providing insurance cover, that insurance coverage was being undertaken by the Central Office and that godown incharge only furnished the required information to the Central Office whose duty it was to take steps to provide insurance cover. It is also seen from the deposition of Sri M.M.Jain, the then General Manager, who was examined as P.W.5, that stocks continued to be underinsured ever since 20-4-1971 till the date of fire accident. Sri D.L.Masali who, as stated supra, was the godown in-charge, when the petitioner went on leave, admitted that he did not maintain stocks or the insurance register nor did he review insurance position of stocks in the C.W.C. godown. The enquiry officer brushed aside the statement of Sri D.L.Masali on the ground that both D.L.Masali and the petitioner were sailing in the same boat and they were interested in safeguarding each other. The Enquiry Officer, however,

accepted that the under insurance situation existed prior to the date when the petitioner went on leave and continued till the date of fire accident.

14. Another aspect which is also required to be taken note of is that the petitioner, in his representation submitted to the disciplinary authority, against the findings of the enquiry officer, categorically stated that he had not issued even a single insurance cover note after he took over charge as godown incharge on 18-12-1990 and all the eleven insurance cover notes were issued by Sri Tiruvenkataswamy functioning at the central office. This specific submission made by the petitioner has not been controverted by the disciplinary authority in its order imposing punishment. The disciplinary authority, however acknowledges the fact that the working system in the CWC godown and at the Adilabad Centre had deteriorated to such an extent that the petitioner, as godown incharge, had merely conveyed information to the Central Office by telephone and the Central office in turn issued insurance advises to the insurance company. The disciplinary authority found fault with this procedure being adopted. The disciplinary authority further held that the Central Office at Adilabad had its own role to play in this regard while acting as the supervisor and competent authority having jurisdiction over the C.W.C. godown and while the Central Office was required to ensure that the stocks were fully covered with insurance, it had failed to do so. The disciplinary authority disbelieved the evidence of Sri D.L.Masali that insurance coverage was not being undertaken by the godown incharge **holding that DL Masali was also a defaulter and was being dealt with separately for similar defaults (emphasis supplied).**

15. While it is not for this Court to re-appreciate the evidence on record, nor to sit in judgment over the findings of the enquiry officer or the disciplinary authority, these aspects are being examined only for the limited purpose of ascertaining as to whether or not the respondents had discriminated against the petitioner in imposition of punishment. While both Sri Tiruvenkataswamy, and Sri D.L.Masali, were imposed lesser punishment and retained in service, the petitioner was imposed the punishment of removal from service. Sri N.K.Parauha, who was also charge sheeted along with the aforesaid three employees was permitted to resign and leave the services of the Corporation without having to face disciplinary action, though he had also been issued a charge sheet and had also been placed under suspension.

16. Both Sri Thiruvenkataswamy, who was the godown incharge prior to the petitioner and Sri D.L.Masli, who was the godown incharge subsequent thereto and

was incharge of godown on the date of the fire accident, were charge sheeted for charges, including failure to cover the CWC godown stocks with adequate insurance. The punishment imposed on Sri Tiruvenkataswamy, by order dated 31-8-1994 was reduction in pay by 4 stages in the time scale of pay for a period of 2 years with the further condition that he would not earn increments of pay during the period of reduction and that on expiry of the period of reduction, the reduction would have the effect of postponing his future increments of pay. Amongst the charges alleged against Sri D.L.Masali, include the charge of not covering cotton bales stock in the godown with adequate insurance and in not reviewing the insurance policy against advice No.17 for Rs.95.00 lakhs and advice No.18 for Rs.30.00 Lakhs ie., total amount of Rs.1.25 Crores. The punishment imposed on Sri D.L.Masali, by order dated 24-8-1994, was reduction in his pay by 6 stages in the scale of pay for four years with the condition that he will not earn increments of pay during the period of punishment and on expiry the reduction would have the effect of postponing his future increments.

17. It is necessary to notice that while Sri Tiruvenkataswamy and Sri D.L.Masali were imposed punishment on 24-8-1994, the punishment of removal from service was imposed on the petitioner, by the disciplinary authority, vide proceedings dated 25-5-1994. The petitioner preferred appeal on 3-6-1994 which was rejected by the appellate authority on 25-7-1994. It is thus clear that the punishment imposed on Sri Thiruvenkataswamy and Sri D.L.Masali on 24-8-1994 were subsequent to the imposition of punishment on the petitioner on 25-5-1994 and subsequent even to the rejection of his appeal on 25-7-1994. While the evidence of Sri D.L.Masali that the godown incharge does discharge the functions of coverage of insurance of cotton stock in the godown was disbelieved on the ground that he was also a defaulter facing similar charges , when it came to imposition of punishment, he was imposed a lesser punishment and retained in service, whereas the petitioner was imposed punishment of removal from service. In the counter affidavit, filed before this court, it is the case of the respondents that the charges levelled against the four employees, (1.petitioner, 2. N.Thiruvenkataswamy 3. D.L.Masali and N.K.Parauha), were similar, but were not identical. For similar charge relating mainly to non-coverage of insurance which resulted in the Corporation suffering enormous financial loss, as a result of the same fire accident which took place on 7-6-1991, different punishments

have been imposed on similarly situated employees.

18. I may not be understood as having held that the petitioner, for the charges held proved against him, does not deserve the punishment of removal from service. It cannot be said that the punishment of removal imposed on the petitioner, for the charges held proved, among which, includes the charge relating to under coverage of insurance resulting in the Corporation suffering enormous loss of Rs.72.13 lakhs, is a punishment which shocks the conscience of this Court. No interference would have been called for, if other employees, similarly situated, had also been imposed the same punishment of removal from service. It is only because Sri N.Thiruvenkataswamy and Sri D.L.Masali were imposed lesser punishment and retained in service while the petitioner had been imposed punishment of removal from service, that this court is called upon to examine as to whether or not different punishments imposed on similarly situated employees for similar charges for the very same incident is discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

19. Neither the disciplinary authority nor the appellate authority had an occasion to examine this aspect since the punishment imposed on N.Thiruvenkataswamy and D.L.Masali on 24-8-1994 is subsequent to the punishment imposed on the petitioner and his appeal being rejected. It is not for this court to go into the question whether the petitioner should be imposed the same punishment as has been imposed on Sri N.Thiruvenkataswamy and Sri D.L.Masali since these are all matters which are, normally, not examined by this Court in proceedings under Article 226 of the Constitution of India.

20. While the scope of interference by this Court, with the quantum of punishment imposed, is undoubtedly limited, in cases where relevant factors which have some bearing on the quantum of punishment have not been considered, the competent authority can be directed to reconsider the matter (**Kailash Nath Gupta v. Enquiry Officer**).

21. I, therefore, consider it appropriate to set aside the order passed by the appellate authority dated 25-7-1994, direct the 1st respondent (appellate authority) to examine the matter with regards discrimination in punishment, in the context of the punishment imposed on the petitioner vis-à-vis the punishment imposed on Sri N.Thiruvenkataswamy and Sri D.L.Masali for similar, if not identical, charges and to

consider, having regard to the punishment imposed on N.Thiruvenkataswamy and D.L.Masali, as to whether the punishment imposed by the disciplinary authority on the petitioner herein requires interference or not. This exercise shall be completed by the appellate authority, after providing the petitioner a reasonable opportunity of being heard, within a period of three months from the date of receipt of a copy of this order. Needless to state that the punishment imposed on the petitioner by the disciplinary authority shall be subject to any order that shall be passed in this regard by the appellate authority.

22. The writ petition is accordingly disposed of. No order as to costs.

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